

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: AMG Investment Group, L.P.)
 Map 104-02-0, Parcels 341.00, 350.00 & 351.00) Davidson County
 Commercial Property)
 Tax Year 2007)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued in the aggregate at \$2,277,300 as follows:

Parcel 341.00

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$370,800	\$1,524,400	\$1,895,200	\$758,080

Parcel 350.00

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$190,800	\$5,400	\$196,200	\$78,480

Parcel 351.00

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$180,000	\$5,900	\$185,900	\$74,360

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 11, 2008 in Nashville, Tennessee. In attendance at the hearing were registered agent Betty A. Sellers and Davidson County Property Assessor's representative Derrick Hammond.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 21,757 square foot office building and two parking lots located on 28th and 29th Avenues North in Nashville, Tennessee. Subject building was constructed in 1984.

The taxpayer contended that subject property should be valued at \$1,695,800 prior to equalization. In support of this position, the income approach was introduced into evidence.

The assessor contended that subject property should be valued at \$2,726,400 prior to equalization. In support of this position, the income approach was introduced into evidence.¹

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic

¹ Mr. Hammond also made brief reference to a 1983 vintage office building in the area that sold for \$75.00 per square foot.

and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$2,011,800 in accordance with the following income approach:

Potential Gross Rental Income	\$ 391,620
Less Vacancy & Credit Loss	- 29,372
Effective Gross Income	\$ 362,248
Plus Other Income	+ 20,800
Total Effective Gross Income	\$ 383,048
Less Operating Expenses	- 171,099
Net Operating Income (NOI)	\$ 211,949
NOI Capitalized @ 9.25%	÷ .0925
Indicated Market Value	\$2,291,341
Application of Appraisal Ratio	x .878
Equalized Value	\$2,011,797

With respect to potential gross rental income, the administrative judge finds that the totality of the proof supports adoption of a market rental rate of \$18.00 per square foot as of January 1, 2007, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). As will be discussed immediately below, the administrative judge finds that the parties' contended rates of \$17.01 and \$19.17 per square foot are somewhat low and high respectively.

The administrative judge finds that Ms. Sellers essentially utilized the actual rents in effect on January 1, 2007 in arriving at her composite market rent estimate of \$17.01 per square foot. The administrative judge finds that several of the leases in effect on January 1, 2007 are dated and not indicative of current market rental rates. The administrative judge finds that simply utilizing contract rents across-the-board is the functional equivalent of a leased fee valuation. Tennessee, of course, values the fee simple estate for ad valorem tax purposes. See *First American National Bank Building Partnership* (Assessment Appeals Commission, Davidson Co., Tax Years 1984-1987).

The administrative judge finds that Mr. Hammond's assumed market rental rate of \$19.17 per square foot was based solely on the average *asking* lease rate in the West End/Belle Meade area as indicated in a local survey. The administrative judge finds that Mr. Hammond made no allowance for rent concessions or the relative desirability of subject property. Indeed, in response to the administrative judge's query, Mr. Hammond testified that he normally expects effective rental rates to equal 92%-96% of asking rates. The administrative judge finds that this would equate to a rental range of \$17.64-\$18.40 per square foot assuming an asking rate of \$19.17 per square foot.

The administrative judge finds that a stabilized vacancy and credit loss allowance of 7.5% should be adopted. The administrative judge finds that Ms. Sellers' proposed 10%

rate was based solely on the subject's actual physical vacancy rate. In contrast, Mr. Hammond's 5.72% estimate was based solely on what he deemed the market norm. The administrative judge finds that both the actual experience of subject property and market norms should be considered to determine a stabilized rate. The administrative judge finds that the preponderance of the evidence supports adoption of a 7.5% vacancy and credit loss allowance.

With respect to other income, the administrative judge finds that the parties' estimates did not differ significantly (\$18,234 vs. \$20,800).² Given the lack of market data and the subject's actual history, the administrative judge finds that the slightly higher figure assumed by Mr. Hammond should receive greatest weight.

The administrative judge finds that Mr. Hammond's assumed operating expenses of \$171,099 should receive greatest weight. The administrative judge finds that Ms. Sellers' assumed expenses of \$215,717 included a portion of the property taxes (accounted for through the effective tax rate) and appear to include capital expenditures such as heating and cooling.

The administrative judge finds that the parties' proof established a base capitalization rate range of 7.26% - 8%. The administrative judge finds that the preponderance of the evidence supports a base capitalization rate of 7.6%. Given an equalized effective tax rate of 1.65%, this results in adoption of a loaded rate of 9.25%.

The administrative judge finds that the adopted market value of \$2,291,341 must be reduced by the 2007 appraisal ratio for Davidson County of 87.8% in order to achieve equalization. This conclusion stems from a finding that under the Constitution of the State of Tennessee, Article II, Section 28, the "ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the state." Equalization relief must be granted in order to comply with this constitutional mandate. This is also required by *Louisville and Nashville Railroad v. Public Service Commission*, 493 F.Supp. 162 (M.D. Tenn. 1978), the decisions of the State Board of Equalization in regard to public utility appeals since 1977, Tenn. Code Ann. § 67-5-601 and the decision of the State Board of Equalization in *Laurel Hills Apartments, et al.* (State Board of Equalization) (Davidson County, Tax Years 1991-1992).

ORDER

It is therefore ORDERED that the following values and assessments be adopted for tax year 2007:

² Other income includes receipts from a cell tower and parking spaces rented to a restaurant at night.

Parcel 341.00

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$370,800	\$1,258,900	\$1,629,700	\$651,880

Parcel 350.00

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$190,800	\$5,400	\$196,200	\$78,480

Parcel 351.00

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$180,000	\$5,900	\$185,900	\$74,360

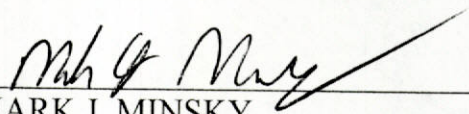
It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 18th day of March, 2008.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Ms. Betty A. Sellers
Jo Ann North, Assessor of Property